



General Assembly

Distr.
LIMITED

A/C.6/49/L.1
23 September 1994

ORIGINAL: ENGLISH

Forty-ninth session
SIXTH COMMITTEE

ORGANIZATION OF WORK

Note by the Secretariat

1. In order to assist the Sixth Committee in the organization of its work, the Secretariat finds it appropriate, in the light of General Assembly resolutions 1898 (XVIII) of 11 November 1963 and 32/71 of 9 December 1977 and of rule 99 (b) of the rules of procedure of the General Assembly, to draw the Sixth Committee's attention to the following.

I. ITEMS ALLOCATED TO THE SIXTH COMMITTEE

2. At its 3rd plenary meeting, on 23 September 1994, the General Assembly decided to allocate 14 items to the Sixth Committee. The titles of these items and their numbers are reproduced in the letter dated 23 September 1994 from the President of the Assembly addressed to the Chairman of the Sixth Committee (A/C.6/49/1).

II. DOCUMENTATION RELATING TO THE ITEMS ALLOCATED TO THE SIXTH COMMITTEE

3. The following table lists the documents of the forty-ninth session of the General Assembly relating to the items allocated to the Sixth Committee. 1/ It includes references to the reports of commissions or committees and the reports that are to be submitted by the Secretary-General pursuant to resolutions or decisions of preceding sessions of the Assembly, as well as to the documents circulated under the agenda items allocated to the Sixth Committee, in accordance with requests of Member States. The items are arranged in the order in which they appear in the letter dated 23 September 1994 from the President of the Assembly to the Chairman of the Sixth Committee (A/C.6/49/1).

	<u>Projected date of issuance</u>
Observer status of national liberation movements recognized by the Organization of African Unity and/or by the League of Arab States (133)	
Report of the Secretary-General (A/49/325)	Issued
Status of the Protocols Additional to the Geneva Conventions of 1949 and relating to the protection of victims of armed conflicts (134)	
Report of the Secretary-General (A/49/255)	Issued
(A/49/255/Add.1)	28 September
Consideration of effective measures to enhance the protection, security and safety of diplomatic and consular missions and representatives (135)	
Report of the Secretary-General (A/49/295)	Issued
(A/49/295/Add.1)	30 September
Letter dated 8 July 1994 from the Permanent Representative of Turkey to the United Nations addressed to the Secretary-General (A/49/224)	Issued
United Nations Decade of International Law (136)	
Report of the Secretary-General (A/49/323)	30 September
(A/49/323/Add.1)	30 September
Letter dated 3 May 1994 from the Permanent Representative of the Russian Federation to the United Nations addressed to the Secretary-General (A/49/151-S/1994/537)	Issued
Report of the International Law Commission on the work of its forty-sixth session (137)	
Report of the Commission, <u>Official Records of the General Assembly, Forty-ninth Session, Supplement No. 10</u> (A/49/10)	Issued
Note by the Secretary-General (A/49/355)	Issued

Projected date
of issuance

Report of the United Nations Commission on International
Trade Law on the work of its twenty-seventh session (138)

Report of the Commission, Official Records of the General
Assembly, Forty-ninth Session, Supplement No. 17 (A/49/17
and Corr.1) Issued

Report of the Secretary-General (A/49/427) 26 September

Report of the Committee on Relations with the Host
Country (139)

Report of the Committee, Official Records of the General
Assembly, Forty-ninth Session, Supplement No. 26
(A/49/26) November 1994

Letter dated 11 September 1994 from the Permanent
Representative of Iraq to the United Nations addressed
to the Secretary-General (A/49/377-S/1994/1047) Issued

Report of the Special Committee on the Charter of the United
Nations and on the Strengthening of the Role of the
Organization (140)

Report of the Special Committee, Official Records of the
General Assembly, Forty-ninth Session, Supplement No. 33
(A/49/33 and Corr.1 (Spanish only)) Issued

Letter dated 29 December 1993 from the Chargé
d'affaires a.i. of the Permanent Mission of the United
Arab Emirates to the United Nations addressed to the
Secretary-General (A/49/56-S/26926) Issued

Question of responsibility for attacks on United Nations and
associated personnel and measures to ensure that those
responsible for such attacks are brought to justice (141)

Report of the Committee, Official Records of the General
Assembly, Forty-ninth Session, Supplement No. 22
(A/49/22) Issued

Letter dated 23 August 1994 from the Chargé
d'affaires a.i. of the Permanent Mission of Ukraine to
the United Nations addressed to the
Secretary-General (A/49/335) Issued

Projected date
of issuance

Measures to eliminate international terrorism (142)

Report of the Secretary-General (A/49/257 and Corr.1 (French only))	Issued
(A/49/257/Add.1)	30 September
Letters dated 6 and 13 April and 26 July 1994 from the Permanent Mission of Israel to the United Nations addressed to the Secretary-General (A/49/118-S/1994/401; A/49/123-S/1994/427; and A/49/279)	Issued
Letter dated 6 April 1994 from the Permanent Representative of India to the United Nations addressed to the Secretary-General (A/49/119)	Issued
Letter dated 22 June 1994 from the Permanent Representative of the Islamic Republic of Iran to the United Nations addressed to the Secretary-General (A/49/188)	Issued
Letter dated 8 July 1994 from the Permanent Representative of Turkey to the United Nations addressed to the Secretary-General (A/49/224)	Issued
Letter dated 12 July 1994 from the Permanent Representative of Italy to the United Nations addressed to the Secretary-General (A/49/228-S/1994/827)	Issued
Letters dated 27 July and 8 August 1994 from the Permanent Representative of Argentina to the United Nations addressed to the Secretary-General (A/49/284-S/1994/890 and A/49/303-S/1994/951)	Issued
Letter dated 1 August 1994 from the Permanent Representative of Iraq to the United Nations addressed to the Secretary-General (A/49/293)	Issued
Letter dated 5 August 1994 from the representatives of France, the United Kingdom of Great Britain and Northern Ireland and the United States of America to the United Nations addressed to the Secretary-General (A/49/299-S/1994/938)	Issued

Convention on jurisdictional immunities of States and their property (143) 2/

No new documentation.

Projected date
of issuance

Request for an advisory opinion from the International Court of Justice (144)

No new documentation.

Review of the procedure provided for under article 11 of the statute of the Administrative Tribunal of the United Nations (145)

Report of the Secretary-General (A/49/258) Issued

Question of criteria for the granting of observer status in the General Assembly (157)

Letter dated 19 September 1994 from the Permanent Representative of the United States of America to the United Nations addressed to the Secretary-General (A/49/231) Issued

III. DATE FOR CONCLUDING THE WORK OF THE COMMITTEE, ORDER AND APPROXIMATE DATES OF CONSIDERATION OF ITEMS

4. Rule 99 (b) of the rules of procedure of the General Assembly provides that:

"Each Main Committee, taking into account the closing date for the session fixed by the General Assembly on the recommendation of the General Committee, shall adopt its own priorities and meet as may be necessary to complete the consideration of the items referred to it. It shall at the beginning of the session adopt a programme of work indicating, if possible, a target date for the conclusion of its work, the approximate dates of consideration of items and the number of meetings to be allocated to each item."

5. At its 1st meeting, on 21 September 1994, the General Committee decided to recommend that the forty-ninth session should recess not later than Tuesday, 20 December 1994, and conclude on Monday, 18 September 1995. Under the circumstances, it appears advisable that the Sixth Committee should arrange its schedule of meetings in such a way that it will conclude its work not later than Friday, 25 November 1994.

6. As regards agenda items 133 to 145, the Sixth Committee, taking into account the pattern followed in the order of consideration of items at recent sessions of the General Assembly, may wish to consider, for the purpose of adopting its programme of work, the following timetable, drawn up on the basis of previous programmes of work adopted by the Committee, which indicates approximate dates of consideration of agenda items referred to it.

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<u>Item</u>	<u>Approximate dates of consideration</u>
Election of the Vice-Chairmen and Rapporteur and organization of work	26 September 1994
Report of the United Nations Commission on International Trade Law on the work of its twenty-seventh session	26-30 September 1994 <u>a/</u>
Status of the Protocols Additional to the Geneva Conventions of 1949 and relating to the protection of victims of armed conflicts)))))	
Observer status of national liberation movements recognized by the Organization of African Unity and/or by the League of Arab States)))))	3-4 October 1994
Consideration of effective measures to enhance the protection, security and safety of diplomatic and consular missions and representatives)))))	
Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization	5-12 October 1994
Measures to eliminate international terrorism	13-21 October 1994
Report of the International Law Commission on the work of its forty-sixth session <u>2/</u>	24 October-4 November 1994
Convention on jurisdictional immunities of States and their property	7 November 1994
Question of responsibility for attacks on United Nations and associated personnel and measures to ensure that those responsible for such attacks are brought to justice	8-10 November 1994
United Nations Decade of International Law	11-16 November 1994
Request for an advisory opinion from the International Court of Justice	17 November 1994
Review of the procedure provided for under article 11 of the statute of the Administrative Tribunal of the United Nations	18 November 1994

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<u>Item</u>	<u>Approximate dates of consideration</u>
Report of the Committee on Relations with the Host Country	23 November 1994 <i>b/</i>
Reserve	25 November 1994

a/ During the period from 26 to 30 September 1994, consultations on the item on the jurisdictional immunities of States and their property should be held in accordance with General Assembly decision 48/413 of 9 December 1993 (see para. 8 (c) below). The Sixth Committee may therefore wish to keep to a minimum the number of meetings it will hold during that period.

b/ Meetings of the States Parties to the Convention on the Law of the Sea are scheduled to take place on 21 and 22 November to discuss the establishment of the International Tribunal of the Law of the Sea.

7. As regards item 157, "Question of criteria for the granting of observer status in the General Assembly", the Sixth Committee may wish to consider it at an early stage in the session, for example, during the week of 3 to 7 October 1994, bearing in mind that the item was included in the agenda of the current session as an additional item, that is, one of an important and urgent character.

IV. ESTABLISHMENT OF WORKING GROUPS AND HOLDING OF CONSULTATIONS

8. In connection with the establishment of subcommittees or working groups and the holding of consultations for the purpose of facilitating the work, it should be borne in mind that the General Assembly took the following decisions at its forty-eighth session:

(a) As regards agenda item 136, "United Nations Decade of International Law", the General Assembly requested the Working Group on the United Nations Decade of International Law to continue to work at the forty-ninth session in accordance with its mandate and methods of work (resolution 48/30 of 9 December 1993);

(b) Concerning agenda item 141, "Question of responsibility for attacks on United Nations and associated personnel and measures to ensure that those responsible for such attacks are brought to justice", the General Assembly recommended that a working group be re-established in the framework of the Sixth Committee at its forty-ninth session in the event that further work is required for the elaboration of a draft convention (resolution 48/37 of 9 December 1993). In the light of this recommendation, the Ad Hoc Committee on the Elaboration of an International Convention Dealing with the Safety and Security of United Nations and Associated Personnel, at the end of its second session (1-12 August 1994), recommended to the General Assembly that it re-establish a

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working group, which would meet for a two-week period, preferably in October or November (A/49/22, para. 29);

(c) With respect to agenda item 143, "Convention on jurisdictional immunities of States and their property", the General Assembly decided that consultations should be held in the framework of the Sixth Committee during one week at the beginning of its forty-ninth session, namely, from 26 to 30 September 1994.

9. Since the conference services to be provided for meetings of working groups and for the holding of informal consultations are those allocated to the Sixth Committee, it is important that such meetings and consultations be held in place of, rather than in addition to, meetings of the Committee.

V. DEADLINE FOR SUBMISSION OF DRAFT RESOLUTIONS WITH FINANCIAL IMPLICATIONS

10. According to rule 153 of the rules of procedure of the General Assembly, "no resolution involving expenditure shall be recommended by a committee for approval by the General Assembly unless it is accompanied by an estimate of expenditures prepared by the Secretary-General". It is therefore imperative that the Main Committees allow sufficient time for the preparation of the estimates of expenditures by the Secretariat and for their consideration by the Advisory Committee on Administrative and Budgetary Questions and by the Fifth Committee. Under the circumstances, if Friday, 25 November 1994, is accepted as the concluding date for the work of the Sixth Committee (see para. 5 above), Wednesday, 9 November 1993, would have to be considered as the mandatory deadline for submission to the Fifth Committee of draft resolutions with financial implications.

VI. CONFERENCE RESOURCES AVAILABLE

11. The available conference facilities will, in principle, enable the Committee to hold an average of seven plenary meetings per week; normally, morning meetings will be held from 10 a.m. to 1 p.m. and afternoon meetings from 3 p.m. to 6 p.m.

12. In order to avoid difficulties in the organization of services for the meetings of regional groups of the Committee, it is suggested that all requests for such meetings be channelled to the Planning and Meetings Services Section through the Secretary of the Committee.

Notes

1/ The figure in brackets after the title of each item indicates its number on the agenda of the forty-ninth session. The listing of documents has been done on the basis of communications and reports available as at 23 September 1993.

2/ For the draft articles adopted by the International Law Commission on this topic, see the report of the Commission, Official Records of the General Assembly, Forty-sixth Session, Supplement No. 10 (A/46/10).

3/ At its forty-eighth session, the General Assembly recommended that the debate on the report of the International Law Commission at the forty-ninth session of the General Assembly should commence on 24 October 1994 (resolution 48/31 of 9 December 1993).



General Assembly

Distr.
LIMITED

A/C.6/49/L.2
4 October 1994

ORIGINAL: ENGLISH

Forty-ninth session
SIXTH COMMITTEE
Agenda item 143

CONVENTION ON JURISDICTIONAL IMMUNITIES OF STATES AND THEIR PROPERTY

Informal consultations held pursuant to General Assembly decision 48/413

I. INTRODUCTION

1. In accordance with General Assembly decision 48/413 of 9 December 1993, informal consultations were held in the framework of the Sixth Committee on the draft articles on the jurisdictional immunities of States and their property, adopted by the International Law Commission at its forty-third session. ^{1/} At its 2nd meeting, the Sixth Committee elected Mr. Carlos Calero-Rodrigues (Brazil) as the Chairman of the informal consultations, which were held during the week of 26 to 30 September and on 3 October 1994. Pursuant to the decision the informal consultations concentrated on the identification and attenuation of the main issues of substance arising out of the draft articles with a view to facilitating the successful conclusion of a convention through general agreement.

2. The conclusions of the Chairman concerning the main issues of substance and a possible basis for achieving a compromise with respect to those issues are set forth below for consideration by the Sixth Committee in connection with the issues of substance arising out of the draft articles as well as the question of convening an international conference to conclude a convention on the subject. The Chairman's assessment is not intended to reflect the views of delegations and is without prejudice to other issues raised or proposals made during the informal consultations or the two previous sessions of the Working Group established under General Assembly decisions 46/55 of 9 December 1991 and 47/414 of 25 November 1992. ^{2/}

II. CONCLUSIONS OF THE CHAIRMAN OF THE INFORMAL CONSULTATIONS

1. Concept of a State for purposes of immunity

Article 2, paragraph 1 (b)

Issue

3. The concept of a State for purposes of immunity, as defined in paragraph 1 (b) of article 2, consists of a number of elements, including, (a) the State as a conceptual reality, (b) the organs comprising the integral structure of the State, (c) the agencies or instrumentalities which are empowered to perform acts in the exercise of the sovereign authority of the State without being a part of its integral structure, (d) political subdivisions which are also empowered to perform such acts, and (e) individuals who are authorized to act as representatives of the State. Whereas the State and its organs have the inherent right to invoke immunity subject to the limitations set forth in the articles, the other entities or individuals have this right as a consequence of the functions they perform in the exercise of the sovereign authority of the State. For historical or other reasons, the constituent units of a federal State may be accorded the same immunity as the federal State without the additional requirement of the performance of acts in the exercise of the sovereign authority of the State. While the position of constituent units varies in different federal States, providing for the possible recognition of immunity for such units would promote broader participation in a convention.

Possible basis for a compromise

4. The immunity of a constituent unit could be recognized on the basis of a declaration made by a federal State, as provided in article 28 of the European Convention on State Immunity. This approach would allow greater flexibility in the light of the differences in the national laws of federal States while at the same time facilitating the application of the provisions by national courts by reducing uncertainties with respect to constituent units of federal States.

2. Criteria for determining the commercial character of a contract or transaction

Article 2, paragraph 1 (c)

Issue

5. The nature of a contract or transaction is the primary criterion for determining whether it is of a commercial character. While some States are of the view that this is the only relevant criterion, others are of the view that a governmental purpose should also be taken into account notwithstanding the apparently commercial nature of a contract or transaction. Although paragraph 1 (c) provides the necessary flexibility to accommodate these two

views, it gives rise to a measure of uncertainty as to when the purpose criterion is to be taken into account in deciding the question of immunity.

Possible basis for a compromise

6. A greater measure of certainty could be achieved by giving States the option of indicating the potential relevance of the purpose criterion under their national law and practice either by means of a general declaration in relation to the convention or a specific notification to the other party by whatever means in relation to a particular contract or transaction, or a combination thereof. This would clarify the situation not only for a private party who is so informed when entering into a contract or transaction with a State but also for a court which is called upon to apply the provisions of the convention.

3. Concept of a State enterprise or other State entity
in relation to commercial transactions

Article 10, paragraph 3

Issue

7. Whereas the "State" as defined in article 2 would normally include various entities, article 10, paragraph 3, recognizes, in the specific context of commercial transactions, a legal distinction between a State and certain entities in the matter of State immunity. Under article 10, paragraph 3, the immunity of a State from foreign jurisdiction is not affected by proceedings relating to a commercial transaction entered into by a State enterprise or other entity established by that State, which has a separate legal personality and is capable of bringing suit and owning property in its own name. For purposes of execution, only the property of such a State enterprise or entity, but not the property of the State, could be attached. In exceptional cases, however, it may be appropriate to disregard the separate legal personality of a State enterprise or other entity. A State enterprise may conclude a commercial contract on behalf of the Government or execute it as the authorized agent of the State. In such cases, the contract may be regarded as a transaction between the State and the private party and that State cannot invoke immunity. Nor can a State invoke immunity in cases where it acts as a guarantor of a liability of a separate entity of that State. It may also be appropriate to hold a State accountable when a State entity has deliberately misled the other party to a commercial transaction about the financial position of the entity or reduced its assets to avoid satisfying a claim.

Possible basis for a compromise

8. The scope of the provision of article 10, paragraph 3, could be clarified by indicating that the question of the liability of a State could arise in relation to a commercial transaction engaged in by a State enterprise or other

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entity established by that State where: (a) the State enterprise or other entity engages in a commercial transaction as an authorized agent of the State; (b) the State acts as a guarantor of a liability of the entity; or (c) the State entity has deliberately misrepresented its financial position or subsequently reduced its assets to avoid satisfying a claim.

4. Contracts of employment

Article 11

Issue

9. Article 11 provides that a State cannot invoke immunity from jurisdiction before a competent court of another State in a proceeding which relates to a contract of employment between the State and an individual, subject to certain exceptions as described in paragraph 2. Reservations were expressed on various provisions of paragraph 2, in particular with regard to the provisions of subparagraphs (a) and (c), which might affect the overriding interest of the forum State in matters of domestic policy and law affording protection to its local labour force. As regards subparagraph (a), there was some question as to whether the phrase "closely connected to the exercise of the governmental authority" was sufficiently clear to facilitate its application by courts. With regard to subparagraph (c), it was suggested that this provision could not be reconciled with the principle of non-discrimination based on nationality.

Possible basis for a compromise

10. Further consideration could be given to the possibility of clarifying the phrase contained in subparagraph (a) and to the deletion of subparagraph (c) in the light of the principle of non-discrimination.

5. Measures of constraint against State property

Articles 18 and 19

Issues

11. In general, there are different views as to whether the exercise of jurisdiction by a court in proceedings to determine the merits of a claim against a foreign State implies the power to take measures of constraint against the property of that State with a view to satisfying a valid judgement confirming the claim. If such a power is recognized, there are also different views as to which property may be subject to measures of constraint. Any attempt to reconcile the different views on these issues would need to take into account the interests of a State in minimizing the interference with its activities resulting from coercive measures taken against its property as well as the interests of a private party in obtaining satisfaction of a claim against a foreign State that has been confirmed by an authoritative judicial pronouncement.

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Possible basis for a compromise

12. Given the complexity of this issue, it was not possible to achieve general agreement on the basis for a compromise in the limited time available. The informal consultations indicated that it may be necessary to consider several elements in attempting to find a generally acceptable compromise, with the following elements being identified for further consideration. First, it may be possible to lessen the need for measures of constraint by placing greater emphasis on voluntary compliance by a State with a valid judgement. This may be achieved by providing the State with complete discretion to determine the property to be used to satisfy the judgement as well as a reasonable period for making the necessary arrangements. Second, it may be useful to envisage international dispute settlement procedures to resolve questions relating to the interpretation or application of the convention which may obviate the need to satisfy a judgement owing to its invalidity. As a consequence of the first two elements, the power of a court to take measures of constraint would be limited to situations in which the State failed to provide satisfaction or to initiate dispute settlement procedures within a reasonable period. Since the State would be given complete discretion to determine the property to be used to satisfy a valid judgement and a reasonable period to do so, the court would have the power to take measures of constraint against any of the State's property located in the forum State which was not used for government non-commercial purposes once the grace period had expired.

13. As regards prejudgement measures, the emphasis on voluntary compliance by a State with an eventual judgement, together with the possibility of measures of constraint, would also lessen the need for such precautionary measures, which could be eliminated or possibly restricted to property belonging to State agencies, instrumentalities or other entities in proceedings instituted against them rather than the State or its organs. Thus, the requisite connection could be maintained with respect to prejudgement measures, which would only be permitted in proceedings against a State agency, instrumentality or other entity.

6. Other issues

14. The Chairman noted that Australia and Japan had drawn attention to the absence of express reservations to their respective proposals made at the previous session, which are reflected in paragraphs 86 and 91 of the report of the Working Group contained in document A/C.6/48/L.4.

Notes

1/ Official Records of the General Assembly, Forty-sixth Session, Supplement No. 10 (A/46/10), chap. II, sect. D.

2/ See the reports of the Working Group, A/C.6/47/L.10 and A/C.6/48/L.4 and Corr.2.



General Assembly

Distr.
GENERAL

A/C.6/49/L.3
11 October 1994

ORIGINAL: ENGLISH

Forty-ninth session
SIXTH COMMITTEE
Agenda item 140

REPORT OF THE SPECIAL COMMITTEE ON THE CHARTER OF THE
UNITED NATIONS AND ON THE STRENGTHENING OF THE ROLE
OF THE ORGANIZATION

Poland: draft resolution

The General Assembly,

Taking into account the fact that in 1995 the United Nations will celebrate the fiftieth anniversary of the Organization,

Recalling that the founders of the United Nations included in the Charter certain provisions relating to transitional security arrangements, which are set out in Article 107 and in the relevant parts of Article 53,

Noting that during the entire existence of the Organization those provisions have never been invoked,

Noting also that the States to which those provisions had been directed are peace-loving Members of the United Nations,

Noting further that those States represent a potential and valuable asset in all the endeavours of the United Nations, particularly in the maintenance of international peace and security,

Considering that the provisions of Article 107 and parts of Article 53 have become obsolete and have for decades had no practical significance,

1. Requests the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization, at its session to be held in 1995, to consider, on a priority basis, the question of the deletion of the so-called "enemy-State" clauses of the Charter of the United Nations,

contained in Article 107 and Article 53, paragraphs 1 and 2, and to recommend to the General Assembly the most appropriate legal action to be taken on this question at its fiftieth session;

2. Decides to include in the provisional agenda of its fiftieth session an item entitled "Question of the delegation of the so-called 'enemy-State' clauses of the Charter of the United Nations, contained in Article 107 and Article 53, paragraphs 1 and 2".



General Assembly

Distr.
GENERAL

A/C.6/49/L.3*
12 October 1994

ORIGINAL: ENGLISH

Forty-ninth session
SIXTH COMMITTEE
Agenda item 140

REPORT OF THE SPECIAL COMMITTEE ON THE CHARTER OF THE
UNITED NATIONS AND ON THE STRENGTHENING OF THE ROLE
OF THE ORGANIZATION

Poland: draft resolution

The General Assembly,

Taking into account the fact that in 1995 the United Nations will celebrate the fiftieth anniversary of the Organization,

Recalling that the founders of the United Nations included in the Charter certain provisions relating to transitional security arrangements, which are set out in Article 107 and in the relevant parts of Article 53,

Noting that during the entire existence of the Organization those provisions have never been invoked,

Noting also that the States to which those provisions had been directed are peace-loving Members of the United Nations,

Noting further that those States represent a potential and valuable asset in all the endeavours of the United Nations, particularly in the maintenance of international peace and security,

Considering that the provisions of Article 107 and parts of Article 53 have become obsolete and have for decades had no practical significance,

1. Requests the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization, at its session to be

* Reissued for technical reasons.

held in 1995, to consider, on a priority basis, the question of the deletion of the so-called "enemy-State" clauses of the Charter of the United Nations, contained in Article 107 and Article 53, paragraphs 1 and 2, and to recommend to the General Assembly the most appropriate legal action to be taken on this question at its fiftieth session;

2. Decides to include in the provisional agenda of its fiftieth session an item entitled "Question of the deletion of the so-called 'enemy-State' clauses of the Charter of the United Nations, contained in Article 107 and Article 53, paragraphs 1 and 2".



General Assembly

Distr.
LIMITED

A/C.6/49/L.4
25 October 1994

ORIGINAL: ENGLISH

Forty-ninth session
SIXTH COMMITTEE
Agenda item 141

QUESTION OF RESPONSIBILITY FOR ATTACKS ON UNITED NATIONS AND
AND ASSOCIATED PERSONNEL AND MEASURES TO ENSURE THAT THOSE
RESPONSIBLE FOR SUCH ATTACKS ARE BROUGHT TO JUSTICE

Report of the Working Group

Chairman: Mr. Philippe Kirsch (Canada)

I. INTRODUCTION

1. In paragraph 5 of resolution 48/37, entitled "Question of responsibility for attacks on United Nations and associated personnel and measures to ensure that those responsible for such attacks are brought to justice", the General Assembly recommended that, at its forty-ninth session, the Working Group that was established at the forty-eighth session under the item be re-established in the framework of the Sixth Committee in the event that further work was required for the elaboration of an international convention dealing with the safety and security of United Nations and associated personnel, with particular reference to responsibility for attacks on such personnel.
2. In accordance with that recommendation, the Sixth Committee, at its 3rd meeting on 26 September 1994, re-established the Working Group and appointed Mr. Philippe Kirsch (Canada) as its Chairman.
3. The Working Group elected Ms. Silvia A. Fernández de Gurmendi (Argentina) and Mr. Volodymyr D. Khandogy (Ukraine) as Vice-Chairmen.
4. Further to decisions taken at its first session by the Ad Hoc Committee on the Elaboration of an International Convention Dealing with the Safety and Security of United Nations and Associated Personnel, Switzerland and the International Committee of the Red Cross (ICRC) participated as observers in the work of the Working Group. 1/
5. The Working Group held 11 meetings between 3 and 14 October 1994.

6. The Working Group had before it a revised negotiating text worked out by the Ad Hoc Committee at its first and second sessions (28 March-8 April and 1-12 August 1994). 2/

7. In addition to elaborating a draft preamble, the Working Group reviewed article 1-2, articles 3 to 9 and articles 10 to 28 of the "revised negotiating text".

II. REVIEW OF THE REVISED NEGOTIATING TEXT

Draft preamble

8. A first draft for the preamble was presented to the Working Group and underwent a number of substantive, structural and drafting changes. The revised text is reflected in the draft convention annexed hereto.

Article 1-2 (Scope of application and definitions)

9. As a result of the debate in the Working Group, article 1-2, as contained in the revised negotiating text, was divided into two separate articles, namely article 1, entitled "Definitions", consisting of paragraph 2 of article 1-2 of the revised negotiating text, and article 2, entitled "Scope of application", consisting of paragraphs 1 and 3 of that same article 1-2.

10. As regards the provision on definitions, changes that were made in the course of the debate included:

(a) The inclusion of a reference to the International Atomic Energy Agency in subparagraphs (a) (ii), (b) (ii) and (b) (iii);

(b) The replacement in subparagraph (b) of the phrase "directly connected with" by "in support of the fulfilment of the mandate of";

(c) The reformulation of subparagraph (c), which now includes a reference in the chapeau to the Charter of the United Nations as well as to the method of establishment and conduct of the operation, and further contains a simplified version of subparagraph (ii) (see art. 1 of the draft convention annexed hereto);

(d) The inclusion of the words "and their equipment" in subparagraph (e).

11. Paragraph 1 of the provision on the scope of the Convention is identical to paragraph 1 of article 1-2 of the revised negotiating text and paragraph 2 is a revised and abridged version of paragraph 3 of that same article 1-2.

Articles 3 to 9

12. Article 3 (Identification), article 4 (Agreements on the status of the operation), article 5 (Transit) and article 6 (Respect for laws and regulations) have remained unchanged. Article 7 (Right of self-defence) now appears, unaltered, immediately after the article entitled "Saving clauses" (see art. 21

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of the draft convention annexed hereto). Article 8 (Duty to ensure the safety and security of United Nations and associated personnel) has remained unchanged (see art. 7 of the draft convention annexed hereto). In article 9 (Duty to release or return personnel captured or detained), the following phrase was added at the beginning of the first sentence "Except as otherwise provided in an applicable status-of-forces agreement ..." (see art. 8 of the draft convention annexed hereto).

Articles 10 to 28

13. In article 10 (Crimes against United Nations personnel), subparagraph 1 (e) has been redrafted and shortened (see art. 9 of the draft convention annexed hereto). Articles 11 (Establishment of jurisdiction), 12 (Prevention of crimes against United Nations and associated personnel), 13 (Communication of information), 14 (Measures to ensure prosecution or extradition), 15 (Prosecution of alleged offenders) and 16 (Extradition of alleged offenders) have remained unchanged (see arts. 10-15 of the draft convention annexed hereto). In article 17 (Mutual assistance in criminal matters), paragraph 1 has been redrafted on the basis of article 11 of the Montreal Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, article 10 of the Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, and article 13 of the Convention on the Physical Protection of Nuclear Material. The rest of the article has remained unchanged (see art. 16 of the draft convention annexed hereto). In article 18 (Fair treatment for alleged offenders), the title has been simplified and paragraph 1 has been slightly redrafted for the sake of clarity (see art. 17 of the draft convention annexed hereto). Articles 19 (Notification of outcome of proceedings) and 20 (Dissemination) have remained unchanged (see arts. 18 and 19 of the draft convention annexed hereto). In article 21 (Saving clauses), the three saving clauses contained in paragraph 1 and paragraph 2 (a) and (b) have been regrouped under a single chapeau as subparagraphs (a), (b) and (c) and two additional saving clauses, one on the right of States to withdraw the personnel contributed to a United Nations operation and the other on entitlement to appropriate compensation payable in the event of death, disability, injury or illness attributable to peace-keeping service, have been added in subparagraphs (d) and (e) respectively. In the first saving clause, the phrase "universally recognized standards of international human rights" has been replaced by "universally recognized standards of human rights as contained in international instruments" and, in the third saving clause, the phrase "in accordance with" has been substituted for the phrase "in a manner consistent with" (see art. 20 of the draft convention annexed hereto). Article 21 of the draft convention annexed hereto corresponds, as indicated above, to article 7 of the revised negotiating text. Article 22 (Dispute settlement provisions) has remained unchanged, except for a technical adjustment in the second sentence of paragraph 2. A new article on the convening of meetings to review the implementation of the convention has been included (see art. 23 of the draft convention annexed hereto). As for articles 23 to 28 containing the final clauses, they have largely remained unchanged. However, while article 28 of the revised negotiating text, concerning the duties of the depositary, has been eliminated, a new article designating the Secretary-General of the United Nations as the depositary of the

convention has been included (see arts. 24-29 of the draft convention annexed hereto).

14. Purely editorial or technical adjustments have furthermore been introduced in various provisions of the revised negotiating text.

15. During the course of the discussion as well as at the concluding stage of the proceedings, one representative recalled that his country, which had been a major troop-contributor to United Nations peace-keeping operations and had, even now more than 5,000 troops and military observers engaged in such operations in different countries, was naturally concerned about the safety of United Nations peace-keeping personnel. He pointed out that the concern for the safety of United Nations peace-keeping personnel must be harmonized with the Charter principle of respect for political sovereignty of the State and that that should also be reflected in the proposed Convention, which should uphold the consent of the host State to the establishment or the continuation of peace-keeping operations so as to encourage compliance with its provisions. In his opinion, fuller consultations were required to reach agreement on the text of the proposed convention. In that context, he drew attention to the substance of the proposals made by his delegation at the first session of the Ad Hoc Committee held from 28 March to 8 April 1994. ^{3/} He suggested, as an alternative, that the General Assembly consider the adoption of a declaration, adding that status-of-forces agreements could draw upon elements from such a declaration. He further observed that an important aspect of the question of safety of United Nations peace-keeping personnel was the issue of payment of death and disability benefit on a uniform scale to peace-keeping personnel irrespective of their nationality, in keeping with the principle of equality enshrined in the Charter, and with the practice already followed in case of reimbursement of troop-contributing costs to Member States.

III. RECOMMENDATION OF THE WORKING GROUP

16. At its 11th meeting, on 14 October 1994, the Working Group decided to submit to the Sixth Committee for consideration and with a view to its adoption the text of the draft convention which is annexed hereto.

Notes

^{1/} Official Records of the General Assembly, Forty-ninth Session, Supplement No. 22 (A/49/22), paras. 9 and 10.

^{2/} Ibid., para. 28.

^{3/} Ibid., annex II, sects. A and H.

ANNEX

DRAFT CONVENTION ON THE SAFETY OF UNITED NATIONS
AND ASSOCIATED PERSONNEL

The States Parties to this Convention,

Deeply concerned over the growing number of deaths and injuries resulting from deliberate attacks against United Nations and associated personnel,

Bearing in mind that attacks against, or other mistreatment of, personnel who act on behalf of the United Nations are unjustifiable and unacceptable, by whomsoever committed,

Recognizing that United Nations operations are conducted in the common interest of the international community and in accordance with the principles and purposes of the Charter of the United Nations,

Acknowledging the important contribution that United Nations and associated personnel make in respect of United Nations efforts in the fields of preventive diplomacy, peacemaking, peace-keeping, peace-building and humanitarian and other operations,

Conscious of the existing arrangements for ensuring the safety of United Nations and associated personnel, including the steps taken by the principal organs of the United Nations, in this regard,

Recognizing none the less that existing measures of protection for United Nations and associated personnel are inadequate,

Acknowledging that the effectiveness and safety of United Nations operations are enhanced where such operations are conducted with the consent and cooperation of the host State,

Appealing to all States in which United Nations and associated personnel are deployed and to all others on whom such personnel may rely, to provide comprehensive support aimed at facilitating the conduct and fulfilling the mandate of United Nations operations,

Convinced that there is an urgent need to adopt appropriate and effective measures for the prevention of attacks committed against United Nations and associated personnel and for the punishment of those who have committed such attacks,

Have agreed as follows:

/...

Article 1

Definitions

For the purposes of this Convention:

(a) "United Nations personnel" means:

- (i) Persons engaged or deployed by the Secretary-General of the United Nations as members of the military, police or civilian components of a United Nations operation;
- (ii) Other officials and experts on mission of the United Nations or its specialized agencies or the International Atomic Energy Agency who are present in an official capacity in the area where a United Nations operation is being conducted;

(b) "Associated personnel" means:

- (i) Persons assigned by a Government or an intergovernmental organization with the agreement of the competent organ of the United Nations;
- (ii) Persons engaged by the Secretary-General of the United Nations or by a specialized agency or by the International Atomic Energy Agency;
- (iii) Persons deployed by a humanitarian non-governmental organization or agency under an agreement with the Secretary-General of the United Nations or with a specialized agency or with the International Atomic Energy Agency;

to carry out activities in support of the fulfilment of the mandate of a United Nations operation;

(c) "United Nations operation" means an operation established by the competent organ of the United Nations in accordance with the Charter of the United Nations and conducted under United Nations authority and control:

- (i) Where the operation is for the purpose of maintaining or restoring international peace and security; or
- (ii) Where the Security Council or the General Assembly has declared, for the purposes of this Convention, that there exists an exceptional risk to the safety of the personnel participating in the operation;

(d) "Host State" means a State in whose territory a United Nations operation is conducted;

(e) "Transit State" means a State, other than the host State, in whose territory United Nations and associated personnel and their equipment are in transit or temporarily present in connection with a United Nations operation.

Article 2

Scope of application

1. This Convention applies in respect of United Nations and associated personnel and United Nations operations, as defined in article 1.
2. This Convention shall not apply to a United Nations operation authorized by the Security Council as an enforcement action under Chapter VII of the Charter of the United Nations in which any of the personnel are engaged as combatants against organized armed forces and to which the law of international armed conflict applies.

Article 3

Identification

1. The military and police components of a United Nations operation and their vehicles, vessels and aircraft shall bear distinctive identification. Other personnel, vehicles, vessels and aircraft involved in the United Nations operation shall be appropriately identified unless otherwise decided by the Secretary-General of the United Nations.
2. All United Nations and associated personnel shall carry appropriate identification documents.

Article 4

Agreements on the status of the operation

The host State and the United Nations shall conclude as soon as possible an agreement on the status of the United Nations operation and all personnel engaged in the operation including, inter alia, provisions on privileges and immunities for military and police components of the operation.

Article 5

Transit

A transit State shall facilitate the unimpeded transit of United Nations and associated personnel and their equipment to and from the host State.

Article 6

Respect for laws and regulations

1. Without prejudice to such privileges and immunities as they may enjoy or to the requirements of their duties, United Nations and associated personnel shall:

(a) Respect the laws and regulations of the host State and the transit State; and

(b) Refrain from any action or activity incompatible with the impartial and international nature of their duties.

2. The Secretary-General of the United Nations shall take all appropriate measures to ensure the observance of these obligations.

Article 7

Duty to ensure the safety and security of United Nations
and associated personnel

1. United Nations and associated personnel, their equipment and premises shall not be made the object of attack or of any action that prevents them from discharging their mandate.

2. States Parties shall take all appropriate measures to ensure the safety and security of United Nations and associated personnel. In particular, States Parties shall take all appropriate steps to protect United Nations and associated personnel who are deployed in their territory from the crimes set out in article 9.

3. States Parties shall cooperate with the United Nations and other States Parties, as appropriate, in the implementation of this Convention, particularly in any case where the host State is unable itself to take the required measures.

Article 8

Duty to release or return United Nations and associated
personnel captured or detained

Except as otherwise provided in an applicable status-of-forces agreement, if United Nations or associated personnel are captured or detained in the course of the performance of their duties and their identification has been established, they shall not be subjected to interrogation and they shall be promptly released and returned to United Nations or other appropriate authorities. Pending their release such personnel shall be treated in accordance with universally recognized standards of human rights and the principles and spirit of the Geneva Conventions of 1949.

Article 9

Crimes against United Nations and associated personnel

1. The intentional commission of:

(a) A murder, kidnapping or other attack upon the person or liberty of any United Nations or associated personnel;

(b) A violent attack upon the official premises, the private accommodation or the means of transportation of any United Nations or associated personnel likely to endanger his or her person or liberty;

(c) A threat to commit any such attack with the objective of compelling a physical or juridical person to do or to refrain from doing any act;

(d) An attempt to commit any such attack; and

(e) An act constituting participation as an accomplice in any such attack, or in an attempt to commit such attack, or in organizing or ordering others to commit such attack;

shall be made by each State Party a crime under its national law.

2. Each State Party shall make the crimes set out in paragraph 1 punishable by appropriate penalties which shall take into account their grave nature.

Article 10

Establishment of jurisdiction

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the crimes set out in article 9 in the following cases:

(a) When the crime is committed in the territory of that State or on board a ship or aircraft registered in that State;

(b) When the alleged offender is a national of that State.

2. A State Party may also establish its jurisdiction over any such crime when it is committed:

(a) By a stateless person whose habitual residence is in that State; or

(b) With respect to a national of that State; or

(c) In an attempt to compel that State to do or to abstain from doing any act.

3. Any State Party which has established jurisdiction mentioned in paragraph 2 shall notify the Secretary-General of the United Nations. If such State Party

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subsequently rescinds that jurisdiction, it shall notify the Secretary-General of the United Nations.

4. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the crimes set out in article 9 in cases where the alleged offender is present in its territory and it does not extradite such person pursuant to article 15 to any of the States Parties which have established their jurisdiction in accordance with paragraph 1 or 2.

5. This Convention does not exclude any criminal jurisdiction exercised in accordance with national law.

Article 11

Prevention of crimes against United Nations and associated personnel

States Parties shall cooperate in the prevention of the crimes set out in article 9, particularly by:

(a) Taking all practicable measures to prevent preparations in their respective territories for the commission of those crimes within or outside their territories; and

(b) Exchanging information in accordance with their national law and coordinating the taking of administrative and other measures as appropriate to prevent the commission of those crimes.

Article 12

Communication of information

1. Under the conditions provided for in its national law, the State Party in whose territory a crime set out in article 9 has been committed shall, if it has reason to believe that an alleged offender has fled from its territory, communicate to the Secretary-General of the United Nations and, directly or through the Secretary-General, to the State or States concerned all the pertinent facts regarding the crime committed and all available information regarding the identity of the alleged offender.

2. Whenever a crime set out in article 9 has been committed, any State Party which has information concerning the victim and circumstances of the crime shall endeavour to transmit such information, under the conditions provided for in its national law, fully and promptly to the Secretary-General of the United Nations and the State or States concerned.

Article 13

Measures to ensure prosecution or extradition

1. Where the circumstances so warrant, the State Party in whose territory the alleged offender is present shall take the appropriate measures under its national law to ensure that person's presence for the purpose of prosecution or extradition.

2. Measures taken in accordance with paragraph 1 shall be notified, in conformity with national law and without delay, to the Secretary-General of the United Nations and, either directly or through the Secretary-General, to:

- (a) The State where the crime was committed;
- (b) The State or States of which the alleged offender is a national or, if such person is a stateless person, in whose territory that person has his or her habitual residence;
- (c) The State or States of which the victim is a national; and
- (d) Other interested States.

Article 14

Prosecution of alleged offenders

The State Party in whose territory the alleged offender is present shall, if it does not extradite that person, submit, without exception whatsoever and without undue delay, the case to its competent authorities for the purpose of prosecution, through proceedings in accordance with the law of that State. Those authorities shall take their decision in the same manner as in the case of an ordinary offence of a grave nature under the law of that State.

Article 15

Extradition of alleged offenders

1. To the extent that the crimes set out in article 9 are not extraditable offences in any extradition treaty existing between States Parties, they shall be deemed to be included as such therein. States Parties undertake to include those crimes as extraditable offences in every extradition treaty to be concluded between them.

2. If a State Party which makes extradition conditional on the existence of a treaty receives a request for extradition from another State Party with which it has no extradition treaty, it may at its option consider this Convention as the legal basis for extradition in respect of those crimes. Extradition shall be subject to the conditions provided in the law of the requested State.

3. States Parties which do not make extradition conditional on the existence of a treaty shall recognize those crimes as extraditable offences between themselves subject to the conditions provided in the law of the requested State.

4. Each of those crimes shall be treated, for the purposes of extradition between States Parties, as if it had been committed not only in the place in which it occurred but also in the territories of the States Parties which have established their jurisdiction in accordance with paragraph 1 or 2 of article 10.

Article 16

Mutual assistance in criminal matters

1. States Parties shall afford one another the greatest measure of assistance in connection with criminal proceedings brought in respect of the crimes set out in article 9, including assistance in obtaining evidence at their disposal necessary for the proceedings. The law of the requested State shall apply in all cases.

2. The provisions of paragraph 1 shall not affect obligations concerning mutual assistance embodied in any other treaty.

Article 17

Fair treatment

1. Any person regarding whom investigations or proceedings are being carried out in connection with any of the crimes set out in article 9 shall be guaranteed fair treatment, a fair trial and full protection of his or her rights at all stages of the investigations or proceedings.

2. Any alleged offender shall be entitled:

(a) To communicate without delay with the nearest appropriate representative of the State or States of which such person is a national or which is otherwise entitled to protect that person's rights or, if such person is a stateless person, of the State which, at that person's request, is willing to protect that person's rights; and

(b) To be visited by a representative of that State or those States.

Article 18

Notification of outcome of proceedings

The State Party where an alleged offender is prosecuted shall communicate the final outcome of the proceedings to the Secretary-General of the United Nations, who shall transmit the information to other States Parties.

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Article 19

Dissemination

The States Parties undertake to disseminate this Convention as widely as possible and, in particular, to include the study thereof, as well as relevant provisions of international humanitarian law, in their programmes of military instruction.

Article 20

Savings clauses

Nothing in this Convention shall affect:

(a) The applicability of international humanitarian law and universally recognized standards of human rights as contained in international instruments in relation to the protection of United Nations operations and United Nations and associated personnel or the responsibility of such personnel to respect such law and standards;

(b) The rights and obligations of States, consistent with the Charter of the United Nations, regarding the consent to entry of persons into their territories;

(c) The obligation of United Nations and associated personnel to act in accordance with the terms of the mandate of a United Nations operation;

(d) The right of States which voluntarily contribute personnel to a United Nations operation to withdraw their personnel from participation in such operation; or

(e) The entitlement to appropriate compensation payable in the event of death, disability, injury or illness attributable to peace-keeping service by persons voluntarily contributed by States to United Nations operations.

Article 21

Right of self-defence

Nothing in this Convention shall be construed so as to derogate from the right to act in self-defence.

Article 22

Dispute settlement

1. Any dispute between two or more States Parties concerning the interpretation or application of this Convention which is not settled by negotiation shall, at the request of one of them, be submitted to arbitration. If within six months from the date of the request for arbitration the parties are unable to agree on the organization of the arbitration, any one of those parties may refer the dispute to the International Court of Justice by application in conformity with the Statute of the Court.
2. Each State Party may at the time of signature, ratification, acceptance or approval of this Convention or accession thereto declare that it does not consider itself bound by all or part of paragraph 1. The other States Parties shall not be bound by paragraph 1 or the relevant part thereof with respect to any State Party which has made such a reservation.
3. Any State Party which has made a reservation in accordance with paragraph 2 may at any time withdraw that reservation by notification to the Secretary-General of the United Nations.

Article 23

Review meetings

At the request of one or more States Parties, and if approved by a majority of States Parties, the Secretary-General of the United Nations shall convene a meeting of the States Parties to review the implementation of the Convention, and any problems encountered with regard to its application.

Article 24

Signature

This Convention shall be open for signature by all States, until _____ 199__, at United Nations Headquarters in New York.

Article 25

Ratification, acceptance or approval

This Convention is subject to ratification, acceptance or approval. Instruments of ratification, acceptance or approval shall be deposited with the Secretary-General of the United Nations.

Article 26

Accession

This Convention shall be open for accession by any State. The instruments of accession shall be deposited with the Secretary-General of the United Nations.

Article 27

Entry into force

1. This Convention shall enter into force ____ days after ____ instruments of ratification, acceptance, approval or accession have been deposited with the Secretary-General of the United Nations.
2. For each State ratifying, accepting, approving or acceding to the Convention after the deposit of the ____ instrument of ratification, acceptance, approval or accession, the Convention shall enter into force on the ____ day after deposit by such State of its instrument of ratification, acceptance, approval or accession.

Article 28

Denunciation

1. A State Party may denounce this Convention by written notification to the Secretary-General of the United Nations.
2. Denunciation shall take effect ____ months following the date on which notification is received by the Secretary-General of the United Nations.

Article 29

Authentic texts

The original of this Convention, of which the Arabic, Chinese, English, French, Russian and Spanish texts are equally authentic, shall be deposited with the Secretary-General of the United Nations, who shall send certified copies thereof to all States.
